

REMARKS

1. Preliminary Remarks

Claims 21, 23, 35, 36, 41 and 42 are pending and under active consideration in this application. Applicant respectfully requests entry of the remarks made herein into the file history of the application.

a. Interview Summary

The undersigned would like to thank the Examiner for the courtesy of the telephone interview of April 15, 2009, wherein the nonstatutory obviousness-type double patenting rejection was discussed. Based on the interview and the remarks set forth herein, Applicant believes that the application is in condition for allowance.

b. Nonstatutory Obviousness Double Patenting

On pages 2-4 of the Office Action, the Examiner provisionally rejects claims 21, 23, 35, 36, 41, and 42 on the grounds of nonstatutory obviousness-type double patenting over claims 21, 33-35, 47, 48, 50-52, and 55 of copending U.S. Patent Appl. No. 10/536,560 (the “‘560 Application”). Applicant respectfully submits that the provisional rejection is overcome by the terminal disclaimer filed herewith.

The instant application and the copending ‘560 Application are commonly owned by Rosetta Genomics Inc. Applicant submits a terminal disclaimer of the instant application signed by the undersigned attorney of record to the ‘560 application in compliance with 37 C.F.R. §1.321(c) and 37 C.F.R. §3.73(b) thereby overcoming the alleged nonstatutory double patenting rejection. In view of the foregoing terminal disclaimer, Applicant respectfully requests that the Examiner reconsider and withdrawn the provisional nonstatutory obviousness-type double patenting rejection of claims 21, 23, 35, 36, 41, and 42 over claims 21, 33-35, 47, 48, 50-52 of the instant application and 55 of the copending ‘560 Application.

2. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

POLSINELLI SHUGHART PC

Dated: April 23, 2009

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